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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,580	02/23/2004	Dane Scarborough	LEV113	9921
7590 11/17/2004			EXAMINER	
STEPHEN M. NIPPER DYKAS, SHAVER & NIPPER, LLP PO BOX 877 BOISE, ID 83701-0877			GUADALUPE, YARITZA	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,580

Applicant(s)

SCARBOROUGH, DANE

Examiner

Yaritza Guadalupe McCall

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 10-14 and 16 is/are rejected.
- 7) ☒ Claim(s) 6, 8, 9, 15, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “first end configured to receive a pivot point and extending in a generally arcuately shaped configuration towards a second end, said second end also configured to receive a pivot pin” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

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and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 2, 7 and 16 are objected to because of the following informalities:

a. Claim 2 recites the limitations " said attachment connection portion " in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

b. In claim 7, line 4 of the claim reads "said second also...". It appears that this is a typographical error and that the claim language should read "said second end also".

However, if the claim is amended to read "said second end also", this will make the claim language confusing, because the claim defines a string connection portion body (32) having a first end configured to receive a pivot pin (40) therein and extending in a generally arcuately shaped configuration toward a second end away from said first end. It is noted from the figures that the arcuately shaped portion would correspond to the second end, i.e., string connection portion. Therefore, it would be impossible that the second end is both arcuately shaped and configured to receive a pivot pin. Appropriate correction is required.

- c. Claim 16 recites the limitations " said string connection portion " in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 – 4 are rejected under 35 U.S.C. 102 (b) as being anticipated by Eirich et al. (US 5,937,532).

With respect to claim 1 : Eirich et al. discloses a releasable hook (100, embodiment shown in Figure 6) for chalk-lines comprising a string (14, 104) having a first end connected to a reel (12) and a second end connected to an attachment device (100), said reel configured to wind and unwind said string (See Column 4, lines 6 – 18); said attachment device (100) comprising a string connection portion (170, 176) and a surface attachment portion (106), said

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surface attachment portion (106) having at least two variable connection devices (120, 184), each variable connection device configured to connect said attachment device to a surface.

In regards to claim 2, Eirich et al. discloses an instrument having a string connection portion (170, 176) being pivotingly connected (See Column 6, lines 31 – 44) to said attachment connection portion (106).

In reference to claim 3, Eirich et al. further discloses said surface attachment portion (106) comprising a clip (120) configured to grasp an edge of a surface (See dashed lines on figure 7A for elements # 120, 140).

With respect to claim 4, Eirich et al. discloses an instrument wherein said surface attachment portion (106) comprises a body (190, 192) defining an aperture (184), said aperture configured to engage a portion of a surface projection (See Column 6, lines 51 – 53) such as a nail.

5. Claims 10, 12 and 13 rejected under 35 U.S.C. 102 (e) as being anticipated by Savalla (US Pub. No. 2002/0026723).

In regards to claim 10, Savalla discloses an adjustable chalk-line hook comprising a selectable surface attachment portion (120), said selectable surface attachment portion (120)

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configured to provide at least three means for connecting said surface attachment portion to a surface (1 and 2 forming a clamp, # 3 forming a hook, and # 11 forming an nail aperture); and a string attachment portion (12) configured to connect said string to said surface attachment portion said string attachment device configured to connect said string attachment portion to said surface attachment portion.

With respect to claim 12, Savalla also discloses said surface attachment portion (120) comprising a clip/ hook (3) configured to grasp an edge of a surface (See paragraph [0033] in page 2 of the specification).

In regards to claim 13, Savalla further discloses said surface attachment portion (120) comprising a body (2B) defining an aperture (11), said aperture configured to engage a portion of a projection connected to a surface such as a nail (See the last 2 lines of paragraph [0033] in page 2 of the specification).

6. Claims 1, 7, 10 – 11, 14 and 16 are rejected under 35 U.S.C. 102 (e) as being anticipated by Guhse (US 6,705,018).

With respect to claim 1 : Guhse discloses a chalk line end (See Figure 1) for chalk-lines comprising a string (24) having a first end connected to a reel and a second end connected to an attachment device (10), said reel configured to wind and unwind said string (See Column 1,

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lines 17 - 42); said attachment device (10) comprising a string connection portion (12A) and a surface attachment portion (14), said surface attachment portion (14) having at least two variable connection devices (16, 18, 30), each variable connection device configured to connect said attachment device to a surface.

In regards to claims 7 and 16 : Guhse also discloses said string connection portion (12A) having a string connection portion body (22) defining an aperture for receiving and connecting said string (24), said string connection portion body having a first end configured to receive a pivot pin (20) therein and extending in a generally arcuately shaped configuration (See Figure 2) toward a second end away from said first end, said string connection body defining an aperture (defined by the separation between the members 12A and 12B and receiving pivoted member 14) dimensioned to allow passage of a portion of said surface attachment portion (14) therein to a close position as shown in Figure 1.

Regarding claim 10, Guhse discloses an adjustable chalk-line end comprising a selectable surface attachment portion (14), said selectable surface attachment portion (14) configured to provide at least three means for connecting (30, 16, 18) said surface attachment portion to a surface (#14 forming a projecting means, #16 forming a hook, and # 18 forming a nail aperture); and a string attachment portion (22) configured to connect said string to said surface attachment portion said string attachment device configured to connect said string attachment portion to said surface attachment portion.

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With respect to claim 11, Guhse teaches an end piece wherein said string attachment portion (12A) is pivotingly connected to said surface attachment portion (14).

Regarding claim 14, Guhse further discloses an end piece for chalk lines wherein said surface attachment portion (14) comprises a projection (30) configured to puncture a surface and to hold said attachment device to said surface (See Column 5, lines 15 – 25).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eirich et al. (US 5,937,532) in view of Beyers (US 6,082,014).

Eirich et al. discloses a releasable hook assembly as stated in paragraph 3 above.

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Eirich et al. does not discloses the surface attachment portion comprising a projection configured to puncture a surface and to hold said attachment device in engagement with said surface as stated in claim 5.

With respect to claim 5 : Eirich et al. discloses a releasable hook assembly (100) for chalk-lines comprising a string (14, 104) having a first end connected to a reel (12) and a second end connected to an attachment device (100), said reel configured to wind and unwind said string (See Column 4, lines 6 – 18). Beyers discloses a chalk line end piece (See Figures 2, 9 and 10) for chalk-lines comprising a string (12) being pivotingly connected (See Column 3, lines 1 – 7) to an attachment device (20), said attachment device (20) comprising a string connection portion (32, 36) and a surface attachment portion (22, 24, 26), said surface attachment portion (22, 24, 26) having at least two variable connection devices (24, 26, 28, 30), each variable connection device, i.e., one variable connection device being defined by the end hooks (24, 26) and the second variable connection device being defined by the projections (28, 30), configured to connect said attachment device to a surface (See Figures 9 and 10); and wherein said projections (28, 30) are configured to puncture a surface and to hold said attachment device in engagement with said surface (See Column 3, lines 14 – 18). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the end hook assembly disclosed by Eirich et al. with an end piece as taught Beyers in order to increase the efficiency of the tool by providing a secondary connection mechanism that will not cause the chalk line to become disengaged form the surface when the string is pulled (See Column 3, lines 14 – 18).

Allowable Subject Matter

9. Claims 6, 8 – 9, 15, and 17 – 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Claim 19 is allowed.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following references are considered of relevance to the present application :

- d. Lynde (US 3,662,471)
- e. Lenz (US 5,408,757)
- f. Shor (US 6,745,485)
- g. Kraft (US 5,873,174)
- h. Gee (US 5,519,976)
- i. Steckler (US 4,995,152)
- j. Wobser II (US 4,932,135)
- k. Bennett (US 6,415,519)

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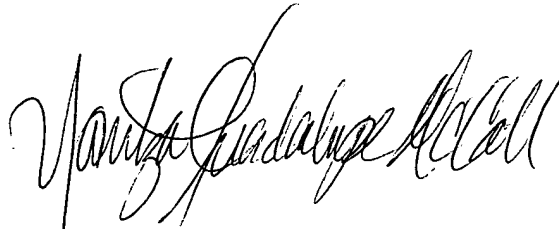
- l. Kraft (US 6,295,739)
- m. Kahmann (US 4,765,557)
- n. Karger (US 4,565,011)
- o. Langsner (US 1,798,476)
- p. Millen (US 5,509,616)
- q. Critelli et al. (US 6,698,679)
- r. Salazar (US 6,622,396)
- s. Blackman et al. (US 5,600,894)

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Yaritza Guadalupe-McCall', is positioned above the printed name.

Yaritza Guadalupe-McCall
Patent Examiner
Art Unit 2859

YGM
November 10, 2004